Date: Wed, 23 Jan 2002 08:31:48 -0800 (PST)
From: Bruce Timberlake <bruce@brtnet.org>
To: microsoft.atr@usdoj.gov
Subject: Microsoft Settlement

I am writing to voice my concern, in accordance with the Tunney Act, over the proposed Microsoft settlement. I am a user and supporter of free and open source operating systems like Linux, FreeBSD, and OpenBSD, and of open source applications like OpenOffice, KDE, and Gnome.

I am convinced that not enough effort is being spent really ensuring that Microsoft is (1) punished for their outrageous and damaging monopolistic practices in the computer industry, and (2) prevented by airtight legal terms from being able to stray down that path again. It is tough to do given the nature of the computer industry: rapidly changing, and not necessarily easily understood by the average person. Nor, possibly, by those who must make the final decisions. I hope that once the key elements of an acceptable settlement are repeated over and over by those of us in the industry, they will be incorporated.

I am all for capitalism, and the best company/product/idea becoming successful in the marketplace on its own merits. But when the playing field isn't equal, due to marketing, "backroom" negotiations, unequal licensing terms for manufacturers who may not "toe the line," etc, then the best company isn't necessarily the one that wins. The best company might have never had a chance from the beginning.

I don't want to pretend that I have all the answers, or even many of them. But as a part-time programmer, I think a few key ideas have to be part of the settlement, and they must be written in straightforward, airtight language, so that Microsoft cannot "figure out a way around them" at any point in the future:

1. All file formats -- past and present (as of the date of the settlement) -- ever used by any Microsoft operating system or program, and specifically any member of the Office suite (Word, Excel, Powerpoint, Outlook), must be made completely and immediately available as "public knowledge" in a way that does not require any money or identifying information to be given to Microsoft by any person, company, or organization that wants the information.

2. All file formats created and used after the date of the settlement by any Microsoft or subsidiary company's operating system or program, and specifically any member of the Office suite (Word, Excel, Powerpoint, Outlook), must be made completely available as "public knowledge" no later than the date the product is available to manufacturers for bundling onto computers, and in a way that does not require any money or identifying information to be given to Microsoft by any person, company, or organization that wants the information..

3. All APIs used to communicate between any Microsoft products (operating systems and/or applications) shall be completely divulged to enable the complete and unrestrained interaction of non-Microsoft operating systems and/or applications, or replacement of Microsoft operating systems. This shall specifically include the Exchange and SMB protocols. This information will be made available as "public knowledhe" in a way that does not require any money or identifying information to be given to Microsoft by any person, company, or organization that wants the information.

4. No computer manufacturer who offers Microsoft operating systems pre-installed on their computers can be penalized in any way (through fee increases, contractual obligations, etc) if they wish to offer alternative operating systems for customers who desire one either in place of, or in addition to, a Microsoft operating system.

There are many other issues that I don't feel competent to suggest a remedy for, but which I would like to state as a concern anyway:

The oversight committee needs to have the staffing and authority to report to the public what Microsoft is doing to "make good" on the terms, and the ability to truly punish Microsoft in some fashion if it does not comply with both the letter and the spirit of the settlement. One idea proposed by Ralph Nader seems especially appropriate:

"The level of fines that would serve as a deterrent for cash rich Microsoft would be difficult to fathom, but one might make these fines deter more by directing the money to be paid into trust funds that would fund the development of free software, an endeavor that Microsoft has indicated it strongly opposes as a threat to its own monopoly. This would give Microsoft a much greater incentive to abide by the agreement."

I also heartily agree with and endorse the GNU Foundation's suggestions, some of which mirrors my own ideas at the opening of this letter:

1. Require Microsoft to publish complete documentation of all interfaces between software components, all communications protocols, and all file formats. This would block one of Microsoft's favorite tactics: secret and incompatible interfaces. The rule must be: if they cannot publish the interface, they cannot release an implementation of it.

2. Require Microsoft to use its patents for defense only, in the field of software. It is crucial to address the issue of patents, because it does no good to have Microsoft publish an interface, if they have managed to work some patented wrinkle into it (or into the functionality it gives access to), such that the rest of us are not allowed to implement it.

3. Require Microsoft not to certify any hardware as working with Microsoft software, unless the hardware's complete specifications have been published, so that any programmer can implement software to support the same hardware.

To close, I would like to quote the summary by the Computer and Communications Industry Association of the DOJ settlement compared to that ordered by the D.C. Circuit Court of Appeals:

"The settlement being prepared by Charles James (1) would not prevent the central ways Microsoft was found to have illegally maintained its Windows monopoly, (2) does nothing to restore competition in the OS market, an express Court of Appeals requirement for a Microsoft remedy, and (3) has no provisions directed to Windows XP and other new endeavors of Microsoft to extend and protect its monopoly to new markets in the future, another express Court of Appeals requirement for a Microsoft remedy. The proposal is so far outside the mainstream of antitrust law, and so completely contradicts the D.C. Circuit's unanimous opinion affirming Microsoft's guilt, that the only explanation must be political pressure. Whether or not the public learns of the backroom activities will be the responsibility of Judge Kollar-Kotelly under the Tunney Act public hearings that are required before approval of anti-trust settlements."

Thank you for taking the time to read this.

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